

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUBREY P. BAKER and U.S. POSTAL SERVICE,
POST OFFICE, Silver Spring, MD

*Docket No. 00-118; Submitted on the Record;
Issued November 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained greater than a 35 percent permanent impairment of the left lower extremity for which he received a schedule award.

On February 10, 1987 appellant, then a 36-year-old letter carrier, sustained an internal derangement of the left lower extremity in the performance of duty. On July 26, 1995 he sustained a left knee strain and on July 2, 1997 he sustained a recurrence of disability.

By decision dated March 3, 1988, the Office of Workers' Compensation Programs granted appellant a schedule award based upon a 30 percent permanent impairment of the left lower extremity.

On December 30, 1998 appellant filed a claim for an additional schedule award.

In a report dated May 5, 1999, Dr. Chester A. Dilallo, appellant's attending Board-certified orthopedic surgeon, provided findings on examination and stated that appellant had a 50 percent permanent impairment of the left lower extremity. He stated:

"He has narrowing of the patellofemoral joint, 2 mm [millimeters], which represents a 10 percent permanent impairment of the left lower extremity and of the knee joint proper of 3 mm [millimeters] which represents a 7 percent permanent impairment.... His ROM [range of motion] of his knee, 5 to 120 degrees of flexion, another 20 percent of impairment.... For the 3 cm [centimeters] of atrophy, this is another 13 percent impairment of the left lower extremity. This represents a 50 percent permanent impairment...."

In a memorandum dated June 15, 1999, Dr. Virginia Miller, a Board-certified pathologist and the district medical Director, stated that appellant had a 35 percent permanent impairment of the left lower extremity based upon the findings in Dr. Dilallo's May 5, 1999 report. Dr. Miller stated that he had a 17 percent permanent impairment of the left lower extremity based on

radiographic findings of a 2 millimeter narrowing of the patellofemoral joint and a 3 millimeter narrowing of the knee according to Table 62 at page 83 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (4th ed. 1993) a 10 percent permanent impairment due to loss of range of motion according to Table 41 at page 78 of the A.M.A., *Guides* and a 13 percent permanent impairment due to muscle atrophy of the left thigh according to Table 37 at page 77 of the A.M.A., *Guides*. She indicated that the impairment percentages were combined according to the Combined Values Chart at page 322 of the A.M.A., *Guides* which resulted in a 35 percent permanent impairment and was 5 percent more than previously awarded to appellant.

By decision dated August 11, 1999, the Office granted appellant an additional schedule award based upon a five percent permanent impairment.¹

The Board finds that appellant sustained no greater than a 35 percent permanent impairment of the left lower extremity for which he received a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

Before the A.M.A., *Guides* may be utilized, a description of appellant's impairment must be obtained which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁴ In this case, the Office obtained such a description from Dr. Dilallo, appellant's attending Board-certified orthopedic surgeon, and the Office medical adviser, Dr. Miller, was able to use the information provided in Dr. Dilallo's report to evaluate appellant's impairment according to the A.M.A., *Guides*.

In his May 5, 1999 report, Dr. Dilallo provided findings on examination and opined that appellant had a 50 percent permanent impairment of the left lower extremity. However, he failed

¹ The Board notes that the case record contains evidence which was submitted subsequent to the issuance of the Office's August 11, 1999 decision. The Board has no jurisdiction to consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. § 8107(a).

³ *James Kennedy, Jr.*, 40 ECAB 620 (1989); *Charles Dionne*, 38 ECAB 306 (1986).

⁴ *Roel Santos*, 41 ECAB 1001 (1990).

to provide an assessment in accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluation of permanent impairment.⁵

In her memorandum dated June 15, 1999, Dr. Miller, a Board-certified pathologist and the district medical Director, correctly applied the physical findings in Dr. Dilallo's May 5, 1999 report to the procedures in the A.M.A., *Guides* by referencing pages and tables and utilizing the Combined Values Chart. He determined that appellant had a 35 percent permanent impairment of the left lower extremity.

As Dr. Miller provided the only evaluation which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.⁶

The decision of the Office of Workers' Compensation Programs dated August 11, 1989 is hereby affirmed.

Dated, Washington, DC
November 20, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁵ See *James Kennedy, Jr.*, *supra* note 3 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluation schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

⁶ See *Bobby L. Jackson*, 40 ECAB 593 (1989).